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20991 7590 01/22/2009 THE DIRECTV GROUP, INC. PATENT DOCKET ADMINISTRATION CA / LA1 / A109 2230 E. IMPERIAL HIGHWAY EL SEGUNDO, CA 90245				
EXAMINER				
USTARIS, JOSEPH G				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Response to Arguments***

1. Applicant's arguments filed December 23, 2008 have been fully considered but they are not persuasive.

Applicant argues that Hendricks does not disclose an allocated bandwidth having excess bandwidth. However, reading the claims in the broadest sense, Hendricks does disclose that limitation in the claims. Hendricks discloses allocating a frequency spectrum of a communication media (See Fig. 3, 216; col. 10 lines 28-51). Hendricks generates a first portion (See Fig. 3, 216, other digital) of the allocated frequency spectrum so that the first portion is less than the total bandwidth (See Fig. 3, 216, other digital; the other digital portion is less than the combined analog signals, digital compressed signals, other digital, and up-stream) to form an excess bandwidth portion (See Fig. 3, 216; any bandwidth outside of the other digital portion is considered excess bandwidth because it is not being used by the other digital portion). Also, Eldering discloses allocating a frequency spectrum for a digital television channel having a total bandwidth (See Fig. 1; col. 3 lines 6-24). Eldering also discloses generating an over-the-air digital television channel signal over a first portion (See Fig. 1, program 1) of the allocated frequency spectrum so that the first portion is less than the total bandwidth (See Fig. 1, program 1 bandwidth is less than the total bandwidth of the channel) to form an excess bandwidth portion (See Fig. 1, any bandwidth outside of the program 1 bandwidth is considered excess bandwidth because it is not being used by program 1) and inserting digital over-the-air electronic content (See Fig. 1, programs 2-7) into the excess bandwidth portion (See Fig. 1; the bandwidth outside of program 1 bandwidth).

Applicant further argues that Breslauer does not disclose a user appliance that receives the over-the-air electronic content using conditional access software. However, reading the claims in the broadest sense, Hendricks in view of Eldering and Breslauer does meet that limitation in the claims. Hendricks discloses that the user appliance (See Fig. 1, 220) receives signal 216 (See Fig. 3), which includes the electronic content in excess bandwidth as discussed in the rejection. Breslauer discloses that a user appliance uses conditional access software (See Fig. 3, conditional access manager 314; col. 7 lines 26-27); the conditional access software allows the user appliance to access the content (See col. 8 line 42 – col. 9 line 12).

Regarding claim 2, applicant argues that a satellite is not a stratospheric platform. However, reading the claims in the broadest sense, the satellite disclosed by Hendricks is coupled with the cable headend thereby meeting the limitations of the claim. Furthermore, appellant's specification does not disclose any examples of stratospheric platforms other than satellites. Therefore, a satellite meets the limitation of "stratospheric platform" wherein the satellite is a high altitude communications platform.

Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH G. USTARIS whose telephone number is

(571)272-7383. The examiner can normally be reached on M-F 7:30-5 PM; Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Joseph G Ustaris/  
Primary Examiner, Art Unit 2424